IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

I.T.A. No. 168 of 2007

Date of Decision: 3.12.2007

The Commissioner of Income Tax-III, Ludhiana

...Appellant

Versus

M/s Emerald International Ltd. (known as Punjab Concast Steels Ltd.), Ludhiana.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE RAJIVE BHALLA

Present: Mr. Sanjiv Bansal, Advocate,
for the appellant-revenue.

JUDGMENT

M.M. KUMAR, J.

This appeal filed by the revenue-appellant, under Section 260A of the Income-tax Act, 1961 (for brevity, 'the Act'), challenges order dated 5.5.2006, passed by the Income Tax Appellate Tribunal, Chandigarh Bench 'B', Chandigarh (for brevity, 'the Tribunal'), in I.T.A. No. 617/Chandi/1996, in respect of assessment year 1990-91. It is claimed that following substantial questions of law would emerge for determination of this Court:-

1. Whether on the facts and the circumstances of the

case, the Tribunal was right in law in holding that Ritu Sales Corporation is not a benamidar of Emerald International Ltd., on the basis of the facts and evidences collected by the Assessing Officer?

2. Whether on the facts and the circumstances of the case, the Tribunal is correct in applying the rules of evidence as applied in criminal proceedings to the income tax proceedings also, whereas the governing rules of evidence for income tax proceedings are the rules of preponderance of probabilities?

On the allegation that the assessee-respondent has transacted business through a benami business concern M/s Ritu Sales Corporation, the Assessing Officer completed the assessment under Sections 143(3)/147 of the Act on 30.3.1995 by adding an income of Rs. 57,73,682/- (A-1). On appeal filed by the assessee-respondent, the CIT (A), vide his order dated 11.3.1996, held that the circumstantial evidence produced by the revenue-appellant did not raise such a substantial suspicion to conclude that the assessee-respondent was actually involved with Ritu Sales Corporation and has transacted benami business. Consequently, the CIT (A) deleted the entire addition made by the Assessing Officer (A-2). On further appeal to the Tribunal preferred by the revenue-appellant, the findings recorded by the CIT (A) were upheld, as is evident from the order dated 5.5.2006 (A-3). The Tribunal held that the Assessing Officer made the additions in the hand of the assessee-respondent on

the basis of presumptions, which could not constitute a valid basis for burdening the assessee-respondent as there was no clinching evidence to prove that the bills were in the name of the assessee-respondent, the goods were dispatched to its destination, the payments were made by it and refund out of excess payment was received by it. The Tribunal also recorded the finding that Sarvshri Rajesh Kumar Arora and Babu Lal, who are alleged to have given instructions on behalf of the assessee to unload the goods in question at the premises of the assessee had not been produced nor anything has come on record that the aforementioned two persons were ding the business actually on behalf of the assessee-respondent.

After hearing learned counsel at a considerable length, we find that the question as to whether a transaction is benami, is a question of fact and it would not constitute a substantial question of law. For the aforementioned proposition reliance may be placed on a Division Bench judgment of the Karnataka High Court in the case of **C.I.T. v. G.M. Dharia, 2000 (243) ITR 104 (Kar.)**.

The other question as to whether the standard of proof in proving a benami transaction is similar to the one in criminal cases does not, in fact, arises because a perusal of the order passed by the Tribunal shows that neither there was any such issue raised nor debated. Therefore, the appeal is liable to be dismissed.

For the reasons aforementioned, this appeal fails and the same is dismissed.

(M.M. KUMAR)
JUDGE

(RAJIVE BHALLA)
JUDGE

December 3, 2007
Pkapoor